following provision of the policy, "* * * or in case any change shall take place in the title or interest or possession (except by succession by reason of the death of the assured) of the property herein named; or if the assured shall not be the sole or the unconditional owner in fee of said property, * * * then in each and every one of the above cases this policy shall be null and void". Plaintiff brings suit on the policy. *Held*, defendant liable. *Home Ins. Co.* v. *Chowning* (Ky.), 233 S. W. 731 (1921).

The policy in this case contains the clause now usually found in fire insurance policies, forbidding "any change in title, interest, or possession". These conditions against alienation or change of title or interest have uniformly been upheld as reasonable and valid. *Olney* v. *German Ins. Co.*, 88 Mich. 94, 50 N. W. 100, 26 Am. St. Rep. 281, 13 L. R. A. 684 (1891); *Smith* v. *Retail Merchants Fire Ins. Co.*, 29 S. D. 332, 137 N. W. 47, 42 L. R. A. (N. S.) 173 (1912). Since, however, the clause containing these conditions operates by way of forfeiture, it is to be strictly construed. *Hitchcock* v. *North Western Ins. Co.*, 26 N. Y. 68 (1862); *North Berwick Co.* v. *New England Fire & Marine Ins. Co.*, 52 Me. 336 (1864).

The general rule is that an executory contract for the sale of the insured premises, not consummated before loss, does not constitute a transfer, alienation, or change in title or interest. *Browning* v. *Home Ins. Co.*, 71 N. Y. 508, 27 Am. Rep. 86 (1877); *Home Mutual Ins. Co.* v. *Tomkies*, 30 Tex. Civ. App. 404, 71 S. W. 812 (1902); *Garner* v. *Milwaukee Mechanics' Ins. Co.*, 73 Kan. 127, 84 Pac. 717, 4 L. R. A. (N. S.) 654, 117 Am. St. Rep. 460 (1906). And this is true even though the instrument evidencing the contract is expressed as "a bond to stand for a deed". *Pringle* v. *Des Moines Ins. Co.*, 107 Iowa 742, 77 N. W. 521 (1898); *Phenix Ins. Co.* v. *Caldwell*, 187 Ill. 73, 58 N. E. 314 (1900). There are some jurisdictions, however, which hold an executory contract to be such a change in title or interest as to render the policy void. *Skinner, etc., Co.* v. *Houghton*, 92 Md. 68, 48 Atl. 85, 84 Am. St. Rep. 485 (1900); *Grunauer* v. *Westchester Fire Ins. Co.*, 72 N. J. Law 289, 62 Atl. 418, 3 L. R. A. (N. S.) 107 (1905). In the last case cited, a part of the purchase price had been paid.

In the instant case the contract was found to be a mere option to purchase, which had not been exercised at the time of the loss. Such an option does not constitute a change of interest so as to avoid the policy. *Mackintosh* v. *Agricutural Fire Ins. Co.*, 150 Cal. 440, 89 Pac. 102, 119 Am. St. Rep. 234 (1907); *House* v. *Security Fire Ins. Co.*, 145 Iowa 462, 121 N. W. 509 (1909); *Terminal Ice & Power Co.* v. *American Fire Ins. Co.*, 196 Mo. App. 241, 194 S. W. 722 (1917).

Virginia seems to follow the same doctrine as laid down in the instant case. *Rochester German Ins. Co.* v. *Monumental Savings Association*, 107 Va. 701, 60 S. E. 93 (1908).

MARRIAGE AND DIVORCE—PRESUMPTION OF VALIDITY WHERE FORMER HUSBAND HAS NOT BEEN ABSENT SEVEN YEARS.—In 1906, appellee married H., who shortly thereafter deserted her. In 1910, having been advised that

her husband was dead, appellee married R., who also shortly thereafter deserted her, and has not been heard of since. Appellee never obtained a divorce from R. After appellee discovered that H. was still alive. Whereupon she returned and lived with him until his death. In 1917, before R. had been absent seven years, appellee married appellant. Still later the appellant sued appellee for divorce, but the grounds alleged do not appear from the report of the case. From a decree awarding appellee counsel fees and alimony *pendente lite*, appellant appealed on the ground that he was never legally married to the appellee, and that consequently he owed her no duty of support, from which it would follow that she was not entitled to counsel fees or alimony. The appellee contended that her marriage to the appellant must be presumed to be valid until proved invalid, which would involve proof, first, that her marriage to R. was legal, and, second, that R. was still alive at the date of her marriage to the appellant. Neither of these facts having been proved by appellant. *Held*, the decree must be affirmed. *Hickman* v. *Hickman* (Miss.), 89 So. 6 (1921).

By the English Common Law, since James I., if a man is abroad for seven years and nothing is heard from him, death is presumed. However, death was not presumed until the full seven year period elapsed, and then there was no presumption as to the time of the death. *Nepean* v. *Knight*, 2 M. & W. 894, 8 E. R. C. 512 (1835). The rule generally adopted in the United States is substantially the same, namely, that in order to create the presumption of death a person must have been absent seven years and not have been heard from by those who, had he been alive, would naturally have heard of him. *Davie* v. *Briggs*, 97 U. S. 628 (1878). And the same presumption applies in cases where a married person remarries, not having heard from the first consort for a period of seven years. *In Re McCausland's Estate*, 213 Pa. 189, 62 Atl. 780, 110 Am. St. Rep. 540 (1906).

However, the law and public policy favor matrimony and when the celebration of a marriage ceremony is once shown, the law raises a strong presumption in favor of its legality, and the burden is cast upon the party objecting to its validity to prove such facts and circumstances as establish its invalidity. *Jones* v. *Gilbert*, 135 Ill. 27, 25 N. E. 566 (1890); *People* v. *Schoommaker*, 117 Mich. 190, 75 N. W. 439, 72 Am. St. Rep. 560 (1898); *Franklin* v. *Lee*, 30 Ind. App. 31, 62 N. E. 78 (1901). This presumption of the validity of marriages attaches with full force to a second marriage, and evidence that the other consort is living at the time of the second marriage is not sufficient to prove the second marriage invalid, since it will be presumed in favor of the second marriage that the previous marriage had been dissolved by divorce. *Nixon* v. *Witchita, etc., Co.*, 84 Tex. 408, 19 S. W. 560 (1892); *Schmisseur* v. *Beatrie*, 147 Ill. 210, 35 N. E. 525 (1893); *Alabama* v. *Vicksburg R. Co.*, 79 Miss. 417, 30 So. 660, 89 Am. St. Rep. 660 (1901); *Howton* v. *Gilpin*, 24 Ky. L. Rep. 630, 69 S. W. 766 (1902); *In Re Thewlis' Estate*, 217 Pa. 307, 66 Atl. 519 (1907). So where the presumption of the validity of a marriage conflicts with the presumption of the continued life of a former spouse, the presumption of the validity of

the second marriage will prevail. *Hunter* v. *Hunter*, 111 Cal. 261, 43 Pac. 756, 31 L. R. A. 411, 52 Am. St. Rep. 180 (1896); *Cash* v. *Cash*, 67 Ark. 278, 54 S. W. 744 (1899); *Wagoner* v. *Wagoner*, 128 Mich. 635, 87 N. W. 989 (1901); *Smith* v. *Fuller* (Iowa), 108 N. W. 765 (1906); *In Re McCausland's Estate, supra; Murchison* v. *Green*, 128 Ga. 339, 57 S. E. 709, 11 L. R. A. (N. S.) 702 (1907). The doctrine in Virginia as enacted by statutes is substantially the same as in the instant case. See Va. Code Sections 4538, 4539 and 6239, and cases there cited in the annotated edition.

MANDAMUS—ORDER TO SHOW CAUSE NOT APPEALABLE.—A petition for mandamus was filed against the appellee requiring him to receive certain certificates amending the charter of the appellant corporation. Upon filing of this petition the judge issued an order requiring the appellee to show cause why he should not receive the said certificates. Upon the question of whether or not an appeal could be taken from this order under a statute allowing appeals from judgments on application for mandamus, etc., it was *Held*, no appeal would lie. *Long* v. *Winona Coal Co.* (Ala.), 89 So. 788 (1921).

The sole question involved here is whether or not an order to show cause is a "judgment" from which an appeal may be taken. A judgment has been defined as the "final determination of the rights of the parties in an action." See "Judgment", 4 WORDS AND PHRASES 3829. While "every direction of a court or judge made or entered in writing and not included in a judgment or decree is denominated an 'order'". See "Orders", 6 WORDS AND PHRASES 5020. For a discussion of the legal differences between judgments, decrees, orders, etc., see *Halbert* v. *Alford* (Tex.), 16 S. W. 814 (1891).

Under an Oregon statute allowing an appeal from "an order affecting a substantial right, and which in effect determines the action or suit so as to prevent a judgment or decree therein", no appeal was allowed from an order requiring defendants to produce certain papers for inspection. *Baillie* v. *Columbia Gold Mining Co.* (Ore.), 188 Pac. 418 (1920). This order was certainly analogous to an order to show cause, and it was said that such an order was "purely interlocutory and could only be reviewed, if at all, upon a final appeal bringing up the whole case." *Baillie* v. *Columbia Gold Mining Co., supra.*

An order to show cause does not affect any substantial right, nor does it finally determine the rights of the matter. See *People* v. *Lumb*, 6 App. Div. 26, 39 N. Y. S. 514 (1896). Hence it is held that no appeal lies from an order directing an alternative mandamus to issue since it is in the nature of an order to show cause. *People* v. *Lumb, supra.* Nor in an old Pennsylvania case, decided under a statute similar to the one in the instant case, was an appeal allowed from an order to show cause why *quo warranto* should not issue. *Commonwealth* v. *Davis*, 109 Pa. St. 128 (1885). Neither does an appeal lie from an order by the court requiring the prosecuting attorney to show cause why he should not proceed in commencing an action upon a certain petition. *Johnson* v. *Blackwell*, 91 Wash. 81, 157 Pac. 223 (1916).